IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION 357 OF 2006 .

RBI 'OERS' Optees Assn. ... Petitioner.
V/s.
The Central Board of Direct Taxes
& ors. ... Respondents.

Mr.V.H.Patil with Asifa Khan for the petitioner.
Mr. Kunal Damle i/b Udwadia & Udeshi for respondent No.4.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 6.6.2006.

P.C. :

. Heard learned Counsel for the petitioner.

Perused petition.

2. This petition is at the instance of an unregistered association, formed by the employees of the Reserve Bank of India, who have opted to retire under the "Optional Early Retirement Scheme" (OERS) framed by the Reserve Bank of India (RBI).

3. The petitioner-Association has challenged the letter dated 20.10.2005 issued by the 1st respondent holding that the exemption under sec. 10(10C) of the Income-tax Act, 1961 is not allowable with respect to ex-gratia payment made to the employees of R.B.I. who have opted to retire under the "Optional Early Retirement Scheme", since scheme

did not conform to the provisions of Rule 2 BA of the Income Tax Rules.

4. The petitioner- Association is also seeking directions against the Income Tax Department not to initiate action against the employees in view of the alleged exemption under section 10 (10C) of the Act available to the members of the Association with further direction not to pass any rectification order under section 154 of the Act and to recall the order, if passed with consequential orders to refund the amount of tax paid or recovered.

5. Having heard Mr. Patil, he does not dispute that in all individual cases, the assessees have filed appeal against the orders passed under section 154 of the Act and such appeals are pending. In this view of the matter, considering the availability of the adequate and effective alternate remedy of appeal, this is not a fit case to entertain this petition at this stag. Even otherwise, an un-incorporated association are not legal persons and as such this writ petition is not maintainable at the instance of the petitioner-Association. (see AIR 1990 Cal.176).

6. In the above view of the matter, this

petition stands dismissed in limine. Needless to mention that all contentions raised by the petitioner-association are kept open. No order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)